IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1042 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VERSIBHAI PARMABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR. P.M. VYAS for Appellant
MR.PRACHCHAK, ADDL.PUBLIC PROSECUTOR for Opponent

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 25/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be tried for offence of murder, outraging modesty of a woman and for breach of Notification under Section 37 (1) of the Bombay Police Act, by Sessions Court, Banaskantha at Palanpur, in Sessions Case No.142 of 1997. By judgment and order dated 14/10/1998, he came to be convicted for offence of murder of Ramubhai Karshanbhai Vaghri and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year. He came to be convicted for outraging modesty of Hiraben Ramubhai and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for three months. The appellant was convicted for breach of notification under Section 37 (1) of the Bombay Police Act and came to be convicted under Section 135 of the Bombay Police Act and sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days. The sentences were ordered to run concurrently and appellant was given benefit of set of. Aggrieved by the said judgment and order, original accused has preferred present appeal.

2. The facts of the case can be stated thus:-

2.1 Deceased-Ramubhai Karshanbhai Vaghri, his wife-Hiraben Ramubhai alongwith Mafabhai Karshanbhai, elder brother of Ramubhai were passing by the S.T. Bus Station at Radhanpur around 20:30 hours on 18th June, 1997. Appellant's house is near the place of incident. Suddenly, the appellant approached Hiraben from behind, caught hold of her hand and misbehaived with her. Ramubhai, therefore, asked him as to why is he behaving in this manner. On being questioned, the appellant took out a knife and inflicted a blow in chest of Ramubhai, which pierced through his heart and cut two major blood vessels. During this transaction, Mafabhai who was following the couple, also reached and asked Hiraben to inform Govindbhai. Hiraben, therefore rushed to Govindbhai and informed him about the incident. Govindbhai therefore, rushed to the spot and found deceased-Ramjibhai lying on the ground and Mafabhai standing beside him. It is further the case of the prosecution that Govindbhai inquired of deceased-Ramjibhai as to what had happened and Ramjibhai told him that the appellant misbehaived with his wife-Hira and when he asked him not to do so, he (the appellant) inflicted knife blow. The deceased was taken to hospital; where, he was declared dead. The Police was informed and arrived at the hospital where Govindbhai lodged his

F.I.R.

2.2 Offence was registered and case investigated. After the arrest of the appellant, a knife was discovered at his behest with a sheath containing blood marks and was sent to F.S.L. for chemical analysis. Ultimately, the Investigating Agency, having found sufficient material to connect the accused-appellant with the crime, filed charge-sheet in the Court of J.M.F.C., Radhanpur. As the case was triable exclusively by Court of Sessions, learned J.M.F.C., Radhanpur committed the case to Court of Sessions and Sessions Case No.142 of 1997 came to be registered.

2.3 Charge was framed against appellant at Exh.3 for the said offence. Appellant pleaded not guilty to the charge and claimed to be tried.

2.4 After considering the evidence, led by the prosecution, the Sessions Court came to a conclusion that the prosecution was successful in establishing charges against the appellant and therefore, convicted the accused-appellant for the said offence by judgment dated 14/10/1998 in Sessions Case No.142 of 1997. It is this judgment and order that has given rise to this appeal.

3. Learned Advocate, Mr.P.M.Vyas, represents the appellant. Learned A.P.P., Mr.Prachchak, represents the State.

3.1 Record and proceedings are before us and we have been taken through them by both the sides during the course of hearing.

4. Learned Advocate, Mr.Vyas, submitted that the incident has occurred all of a sudden. The appellant is alleged to have inflicted only one blow and therefore the conviction under Section 302 of the Indian Penal Code has been erroneously recorded by the trial Court. He submitted that, if evidence of Govindbhai Karshanbhai (Exh.10) is seen, it is clear that Hiraben who gives the first version about the incident, does not speak of any misbehaviour with her in her version before Govindbhai. Mr.Vyas, submitted that the case therefore, is, founded on deposition of Hiraben, who is not giving proper details as to genesis of the incident. He, therefore, submitted that the appeal may be allowed.

4.1 By way of alternative submission, Mr.Vyas, submitted that the case may be considered as a case of culpable homicidal not amounting to murder, as intention

of causing murder cannot be attributed to the appellant.

5. Learned A.P.P., has opposed this appeal. He submitted that it is not correct to say that Hiraben has not given any version about the misbehaviour on part of the appellant, while she stated the details before Govindbhai. He has drawn our attention to paragraph No.1 of deposition of Govindbhai (Exh.10), as well as, F.I.R. (Exh.11). Mr.Prachchak, also submitted that though the incident can be said to have occurred suddenly, it cannot fall within any of the exceptions to Section 300 of Indian Penal Code looking to the genesis of the incident. The appellant has misbehaived with the wife of the deceased and on being stopped or questioned, he has; without any rhyme or reason, inflicted knife blow, which proved to be fatal. Mr.Prachchak, submitted that the knife which is used by the appellant is not an ordinary knife but it is a pointed and curved knife which is kept in a sheath. The force with which the blow is given, would indicate the intention of the appellant and therefore the trial Court has rightly recorded the conviction and the appeal may be dismissed.

6. We have taken into consideration rival side contentions. We find that first informant-Govindbhai is

elder brother of deceased-Ramubhai. He is the first person to receive information regarding incident through Hiraben, who is herself a victim and eye-witness to the incident. Govindbhai has been told by Hiraben that, while she was going with Ramubhai and Mafabhai to attend a marriage, the appellant met on the way, caught her hand and misbehaived with her and, when Ramubhai asked as to why is he behaving like this, the appellant inflicted a knife blow in the chest of Ramubhai. This aspect appears in the F.I.R. (Exh.11), so also, in the deposition of Govindbhai (Exh.10). Govindbhai has been cross-examined at length, but nothing turns out of it to render his deposition untrustworthy or incredible. It is true that certain admissions have been made by this witness during cross-examination to abrogate the incident with Hiraben, but, in that very paragraph (Paragraph No.10 of deposition) Govindbhai has admitted that Ramu told him that Versi had teased his wife and on being asked not to do so, Versi has inflicted knife blow. It is clear therefore that contention of learned Advocate, Mr.Vyas that Hiraben's first disclosure of incident before Govindbhai does not speak of misbehaviour with her by the appellant and therefore suppresses genesis is not borne out by the record and therefore cannot be accepted.

6.1 Hiraben Ramubhai, Prosecution Witness No.3 is examined at Exh.12. She also says the same thing viz. that while they were passing near Chhatralay, accused-appellant came from behind and misbehaived with her and therefore, her husband asked accused as to why is he misbehaving with his wife and the accused-appellant therefore inflicted knife blow in chest of Ramu and ran away. Mafabhai, who was following them asked her to go home and inform. She therefore, went to Govindbhai, who is another elder brother of the deceased and told him, as well as, his son Manu. They rushed to the place and Ramu told them about the incident. Thereafter, they took the deceased to the hospital in a cart where doctor declared him dead after examining. During cross-examination, it emerges that Mafabhai had intervened. However, appellant did not cause any injury to Mafabhai.

6.2 Mafabhai Karshanbhai is an eye-witness to the incident. He is examined at Exh.14 and wholeheartedly supports the prosecution case, as emerging from depositions of Hiraben and Govindbhai.

6.3 Dr.Sunilkumar P. Trivedi, is examined at Exh.6. He had performed the postmortem. The postmortem notes are at Exh.7. The doctor says that the injury is possible

with the muddamal knife and that the injury was sufficient in ordinary course of nature to cause death. During cross-examination, he admits that the injury was so grave that man would not survive long and would die on the spot. The survival would be in terms of minutes and he may not remain conscious during that time, as the veins were cut.

6.4 The prosecution has produced a notification issued by the Additional District Magistrate, Banaskantha at Palanpur under Section 37 (1) of the Bombay Police Act, at Exh.38.

7. The above pieces of evidence clearly indicate that the appellant approached Hiraben from behind while she was going to attend marriage with her husband, caught her hand and misbehaived with her. This version is consistent from the version given by Hiraben to Govindbhai, Govindbhai's version in the F.I.R. and in his deposition, in deposition of Hiraben as well as Mafabhai. There is no reason to disbelieve any of the witnesses and trial Court is, therefore, justified in recording conviction of the appellant under Section 354 of the Indian Penal Code.

8. It is also clear that when accused-appellant misbehaived with the wife of the deceased and when deceased intervened by asking him as to why is he behaving in that manner, the appellant without any rhyme or reason inflicted the knife blow. That knife is discovered by the appellant in the presence of Panch Witnesses. It is not an ordinary knife, as is pleaded by the appellant in his further statement. The knife has a pointed and curved blade. It has sheath. The injury though only one in nature, is caused with such a lethal knife on vital part of body like chest. The injury is inflicted with such a force that, it penetrates into the thoracic cavity and penetrates heart, cuts two major blood vessels resulting into death of the deceased. The doctor has certified the injury to be sufficient in ordinary course of nature to cause death of the deceased. This injury is caused by the appellant when he was asked by the husband of Hiraben as to why he was behaving with his wife in such a manner.

9. In our considered opinion, the case cannot fall in any of the exception so as to make the case fall outside the definition of murder. The intention can be read from the fact that the appellant was armed with a knife of a deadly nature from the beginning, he has used

the knife without any provocation on being questioned by the deceased about misbehaviour with the wife of deceased. The nature of knife, the site of injury selected by the appellant and the force with which the blow is given, leads to a clear inference about his intention of causing death of the deceased. The appellant, therefore, has rightly been convicted by the trial Court for the offence of murder.

10. The notification at Exh.38 issued by the learned Additional District Magistrate, Banaskantha at Palanpur specifically prohibits carrying knife. It was in force at the time of incident and, therefore, conviction under Section 135 of the Bombay Police Act is rightly recorded.

11. Despite our close scrutiny, we are unable to find any material, nor learned Advocate for the appellant is able to show any material which would persuade us to believe that the trial Court has committed an error in recording conviction. We have gone through the judgment and order in question and we are in agreement with the reasonings adopted and conclusion arrived at by the trial Court. We do not find any merits in any of the contentions raised before us either for recording

acquittal or for altering the conviction from one under Section 302 to one under Section 304 of the Indian Penal Code. By no stretch of imagination can the case fall within the definition of culpable homicidal not amounting to murder.

12. Appeal therefore, must fail and stands rejected. The judgment and order of the trial Court impugned in the appeal is confirmed.

(A.L.DAVE, J.)

(BANKIM N. MEHTA, J.)

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